

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 MICHAEL BERRY,

12 v.
13 Plaintiff,

14 WHOLE FOODS MARKET PACIFIC
15 NORTHWEST, INC.,

16 Defendant.

17 CASE NO. 2:23-cv-819 MJP

18 ORDER DENYING APPLICATION
19 FOR COURT APPOINTED
20 COUNSEL

21 This matter comes before the Court on Plaintiff's Application for Court Appointed
22 Counsel. (Dkt. No. 13.) Having reviewed the Motion, the Complaint (Dkt. No. 1-2), and all
23 supporting materials, the Court DENIES the Motion.

24 Plaintiff initiated this case in state court alleging his former employer, Whole Foods
Market, violated the Washington Law Against Discrimination ("WLAD") when it terminated his
employment. (Compl. at 9-10.) Whole Foods then removed this action to federal court under
diversity jurisdiction. (Dkt. No. 1.) Plaintiff now asks the Court to appoint counsel to represent
him.

1 Generally, civil litigants have no right to have counsel appointed. Palmer v. Valdez, 560
 2 F.3d 965, 970 (9th Cir. 2009). If “exceptional circumstances” warrant, a court may appoint
 3 counsel pursuant to 28 U.S.C. § 1915(e)(1). Palmer, 560 F.3d at 970. Whether the circumstances
 4 are exceptional enough to warrant appointed counsel requires an evaluation of both the
 5 likelihood of success on the merits and the ability of the plaintiff to articulate their claims pro se
 6 in light of the complexity of the legal issues involved. Wilborn v. Escalderon, 789 F.2d 1328,
 7 1331 (9th Cir. 1986). Neither of these considerations is dispositive; instead, they must be viewed
 8 together. Id.

9 Plaintiff has not demonstrated exception circumstances exist in this case that justify the
 10 appointment of counsel. His claim under the WLAD does not appear to be complex and he is
 11 able to articulate the claim with clarity. Indeed, Plaintiff’s filings to date demonstrate he is
 12 capable of articulating his claims and bringing motions before the Court. At this early phase of
 13 the case, the Court cannot conclude that Plaintiff is likely to succeed on the merits of the case.
 14 Accordingly, Plaintiff has not demonstrated that his case involves the type of exception
 15 circumstances that warrant appointment of counsel by the Court.

16 For the reasons articulated above, the Court DENIES Plaintiff’s Application for Court-
 17 Appointed Counsel. Unless Plaintiff retains counsel, he will be responsible for pursuing the case
 18 pro se. Materials to assist pro se litigants are available on the United States District Court for the
 19 Western District of Washington’s website at this address:
 20 <https://www.wawd.uscourts.gov/representing-yourself-pro-se>. Although the court affords some
 21 leeway to pro se litigants, Plaintiff must comply with case deadlines, the Federal Rules of Civil
 22 Procedure, and the Western District of Washington Local Rules, which can also be found on the
 23 Western District of Washington’s website. .

The clerk is ordered to provide copies of this order to all counsel.

Dated November 6, 2023.

Wesley P. Beckman

Marsha J. Pechman
United States Senior District Judge